

STATEMENT BY
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FOR OCEANS AND FISHERIES AFFAIRS
BEFORE THE
SENATE FOREIGN RELATIONS COMMITTEE
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
THURSDAY, MAY 22, 1975

Mr. Chairman,

I would first like to thank you for the opportunity to appear before this Committee and to share with you my preliminary views concerning the recently concluded third session of the United Nations Law of the Sea Conference. Since Ambassador Moore has already commented on the results in a comprehensive way, I will restrict my comments today primarily to the question of fisheries. In addition, since the "Single Negotiating Text" referred to by Ambassador Moore was delivered to the various delegations on the final day of the Conference, the NSC Interagency Task Force on the Law of the Sea has not yet had the opportunity to fully assess the document and review our options. Accordingly, my comments must be of a very preliminary nature.

The single negotiating text must be viewed as a procedural device providing the basis for further negotiations, and is not a negotiated text or an agreed compromise. The President of the Conference, when he requested the Chairman of each

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of the three main committees to prepare a single negotiating text covering the subjects entrusted to his committee indicated that these texts should take into account all formal and informal discussions which had transpired, and that they should not prejudice the position of any delegation.

Thus, with respect to fisheries as well as other issues, the text must be viewed as not affecting any nation's national position, and amendable in future work sessions. However, as Ambassador Moore has indicated, the significance of the text should not be overlooked. Its roots are in the negotiations, and in some areas it reflects broadly shared views. It would be a mistake to view it as arbitrary or without substance.

In Geneva, negotiations regarding fisheries issues were conducted at a more intensive level than in previous sessions of the Conference, and they built upon a framework of prior consultations among nations, both of a bilateral and small multilateral character. Much of the work product in the unified text, particularly as regards fisheries, was the result of intensive discussions among a group of about 30 nations working under the guidance of Minister Jens Evensen of Norway. At the

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same time other areas of the text reflect efforts of similar negotiating groups.

As was our hope, the unified negotiating text contains many of the fisheries concepts the U.S. has been advocating for a number of years. For instance, there are articles on conservation and full utilization, and separate treatment for highly migratory and anadromous species of fish. However, these articles will require careful study and must be analyzed in conjunction with the entire text to make a proper judgment as to their value and overall negotiability. I can comment on a few items on a very preliminary basis, however. First, the fisheries articles read as a whole have a strong tilt in the direction of advancing the interests of coastal states. This overall inclination would tend to strengthen our own position regarding our coastal fisheries.

The text contains an Article recognizing the concept of full utilization, which has been advocated by the United States. Of course, the coastal state has a clear preference to take coastal stocks to the limit of its harvesting capacity, not to exceed the maximum yield. At the same time, the coastal state is required to ensure through proper conservation measures that the living resources

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within the economic zone are not endangered by over-exploitation.

As I stated earlier, the text provides for special treatment for anadromous and highly migratory species of fish. The salmon article appearing in the text was widely discussed both among states in whose waters such fish originate as well as states fishing for salmon. This Article appears to have broad support within that group, and it represents a careful balancing of the interests of all of the states involved in both the Atlantic and Pacific salmon fisheries.

The tuna article is disappointing. On the positive side, it calls for the establishment of appropriate international fisheries organizations in each region and requires all states to participate in their work. However, the fisheries management and allocation aspects of this article are not good. Nevertheless, it is our view that we are probably better protected by having a single text, to be further negotiated than we would have been had there been no article on tuna at all.

In addition to these articles, Mr. Chairman, there are provisions in the unified text giving

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coastal states the same rights over continental shelf fishery resources as presently provided for in the Continental Shelf Convention of 1958, a section dealing with the conservation of living resources beyond the limits of national jurisdiction and an article setting forth special rules for cooperation among states bordering on enclosed or semi-enclosed seas regarding exploitation of living resources. There are also articles calling for protection for marine mammals.

As you are aware, Mr. Chairman, the next meeting of the Conference will be an eight week session in New York beginning March 29, 1976. During the intervening period much work will have to be done. The Executive Branch is undertaking an extensive review and assessment of the informal single negotiating text with a view toward establishing options open to us and determining how we can spend the months available to us in the most profitable manner. Following such a review, representatives of the Executive Branch would appreciate the opportunity to appear before you again to discuss in more detail our assessment. As Ambassador Moore has stated, our review will necessarily take into account the views of Congress, and our

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evaluation will be an objective one. It continues to be our desire to work closely with this Committee and the Congress in moving toward a successful solution to our many problems.

In this regard, let me join with Ambassador Moore in expressing my appreciation for the help and assistance of the many members who visited us in Geneva, and, indeed, for the support of this Committee in all of our work. While we may have differed on questions of time, our objectives in achieving the maximum benefit for our fisheries, consistent with sound principles of conservation, have never been different from yours. Your continued support of these objectives will enable us to carry forth constructive work during the next weeks and months.

Thank you, Mr. Chairman.

STATEMENT BY
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TO THE THIRD UNITED NATIONS LAW OF THE SEA CONFERENCE
FOR THE SENATE FOREIGN RELATIONS COMMITTEE,
SUBCOMMITTEE ON OCEANS AND INTERNATIONAL ENVIRONMENT
THURSDAY, MAY 22, 1975

Once again, it is an honor and pleasure to report to the Senate Foreign Relations Committee on the progress in the Law of the Sea negotiations. The second substantive session of the Third United Nations Conference on the Law of the Sea was held in Geneva from March 17 to May 9, 1975. A third substantive session of eight weeks is planned for New York in 1976 commencing on March 29. The Conference also recommended that the United Nations General Assembly provide for an additional substantive session in the summer of 1976 if the third session of the Conference so decides and that the Conference be given priority by the General Assembly. Much to my regret our proposal that the Assembly expressly provide for completion of the treaty in 1976 was not approved.

I would summarize the results of the Geneva session as follows: the session concentrated on what it was supposed to -- the translation of the general outlines of agreement reached at the first session in Caracas into specific treaty articles-- and achieved a very considerable degree of progress; however, not as much progress as our

Delegation had hoped or as the pressures for prompt agreement on a new law of the sea demand.

The decision of the Caracas session not to prolong general debate was respected -- so much so that formal Plenary and Committee sessions were largely devoted to organizational and procedural matters. The substantive work of the session was carried on in informal Committee meetings (without records) and in working groups -- both official and unofficial -- with as many as fifteen different groups meeting in the course of a single day; and in private bilateral and multilateral consultations.

The official groups were handicapped by the insistence -- a reflection of the acute sensitivity of many countries with respect to the sovereign equality of all states -- that all such groups be open-ended. As a result they were generally ineffectual in dealing with controversial issues of general interest; such meetings were attended by a very large number of delegations who, by and large, restated their national positions rather than negotiating widely acceptable treaty language. The official working groups were much more effective in dealing with a number of articles which were relatively non-controversial or of interest to only a limited number of countries -- such as the articles dealing with the baselines from which the territorial area is to be measured, innocent passage in the territorial sea, high seas law and,

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in the pollution area, articles on monitoring, environmental assessment and land-based sources of pollution.

The most effective negotiations and drafting of compromise treaty articles in major controversial areas took place in unofficial groups of limited but representative composition which were afforded interpretation and other logistical support by the Conference secretariat.

The Evensen group of some 30 to 40 participants, principally head of delegation, was organized by Minister Evensen of Norway, initially on the basis of cooperation by a group of international lawyers on the basis of cooperation by a group of international lawyers acting in their personal capacity, but functioning at Geneva more as representatives of their respective countries. The Evensen Group concentrated on the economic zone, the continental shelf, and vessel-source pollution. The dispute settlement group which met under the co-chairmanship of Mr. Adede of Kenya and Ambassadors Galindo Pohl of El Salvador and Harry of Australia, with Professor Louis Sohn of Harvard serving as Rapporteur, was open to all Conference participants and was attended at one time or another by representatives from more than 60 countries. Another informal group was organized by representatives of the United Kingdom and Fiji to work out a set of articles on unimpeded transit through straits as a middle ground between the free transit articles supported by many maritime countries and the innocent passage concept supported by a number of straits states.

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In brief, the principal substantive accomplishments of the session were the large number of relatively non-controversial treaty articles agreed to in the official working groups and the more controversial articles negotiated in the smaller unofficial groups which, while not as yet accepted by the Conference as a whole, do represent negotiated articles in large measure accommodating the main trends at the Conference.

The principal procedural achievement of the Geneva session was the preparation of an ~~informal single negotiating~~ text covering virtually all the issues before the Conference. This text was prepared by the Chairmen of the three Main Committees on their responsibility pursuant to the consensus decision of the Plenary, on the proposal of the Conference President, that they should prepare a negotiating (not negotiated) text as a procedural device to provide a basis for negotiations. Copies of the text have been given to the Committee for your study, and possible inclusion in the record. The single Committee text does provide a means for focussing the Conference work in a way that should facilitate future negotiations with revisions and amendments reflecting the agreements and accommodations I hope will be reached at the next session.

There was clear evidence at the Geneva session of a widespread desire to conclude a comprehensive treaty on the Law of the Sea. Unfortunately, the nature of the negotiations

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was not geared to immediately visible results and the public impressions may have been that little progress was made. In fact, there were substantial achievements in some areas, although overall I was disappointed that the work schedule outlined by the General Assembly for conclusion of the treaty in 1975 will not be met. The informal single texts and the provision for a second meeting in 1976 if the Conference so decides, provide a procedural basis for concluding a treaty next year. It remains to be seen whether or not the will exists to reach pragmatic solutions where wide differences of view still exist. In this connection, I should also point out that a number of countries, particularly those with little to gain and in some cases much to lose from the establishment of a 200-mile economic zone, do not share our perception of the urgency of completing the treaty promptly. With the general expectation from the outset that at least one more full negotiating session would be scheduled in 1976, the United States was virtually isolated in urging major political compromise at the Geneva session on the very difficult Committee I deep seabed issues.

I believe that much common ground was found on navigation, fisheries, continental shelf resources and marine pollution issues. Significant differences remain with respect to the deep seabed regime and authority and, to a lesser degree, on

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scientific research and on the desires of landlocked and geographically disadvantaged states to participate in resources exploitation in the economic zone.

The juridical content of the 200-mile economic zone is probably the issue of the greatest interest to most countries.

The Evensen group made a considerable contribution to the Committee II single text by producing a chapter on the economic zone, including fisheries. These articles provide for comprehensive coastal-state management jurisdiction over coastal fisheries stocks out to 200 miles. There is also a coastal-state duty to conserve stocks and to fully utilize them by allowing access by foreign states to the catch in excess of the coastal state's harvesting capacity. The articles on anadromous species (e.g., salmon) were largely acceptable to the states most affected. These articles contain new, strong protections for the state in whose fresh waters anadromous fish originate. Attempts to negotiate acceptable articles on highly migratory species such as tuna were not successful at this session. Efforts to reach a negotiated solution in this area, however, will continue.

There was little opposition to a 12-mile territorial sea (Ecuador's proposal for a 200-mile territorial sea was supported only by a handful of countries and even some of the supporting statements were ambiguous). There was a strong trend in favor of a regime of unimpeded transit passage in

straits used for international navigation. There was very widespread acceptance of freedom of navigation and overflight and other uses related to navigation and communication as well as freedom to lay submarine cables and pipelines in the 200-mile economic zone.

Coastal state exclusive rights to the non-living resources (principally petroleum and natural gas) in the economic zone were broadly supported. There was more controversy with respect to coastal state rights to mineral resources of the continental margin where it extends beyond 200 miles. As a possible compromise between opposing views, the United States suggested the establishment of a precise and reasonable outer limit for the margin coupled with an obligation to share a modest percentage of the well-head value of petroleum and natural gas production with the international community. I anticipate that there will be further negotiations in the Evensen group to determine a precise method for defining the outer limit of the continental margin beyond 200 miles and on a precise formula for revenue sharing.

Regarding protection of the marine environment, texts were completed in the official working groups on monitoring, environmental assessment and land-based pollution. Texts were almost completed on ocean dumping and continental shelf pollution. Negotiations were conducted in the Evensen group on vessel source pollution without reaching agreement; however,

a trend did emerge against coastal state standard setting for vessel-source pollution throughout the economic zone.

The Group of 77, particularly those members who did not participate in the Evensen group, urged further strengthening of coastal state rights in the economic zone. The landlocked and geographically disadvantaged states were dissatisfied with the failure of the Evensen articles to afford them the legal right to participate in exploiting the natural resources of the economic zone on a basis of equality with coastal states.

There was a continuation of the debate between those states that demand consent for all scientific research conducted in the economic zone and those, such as the United States, that support the right to conduct such research subject to the fulfillment of internationally agreed obligations. A new approach sponsored by the Soviet Union attracted considerable attention. It requires consent for resource-related research and compliance with internationally agreed obligations for non-resource related research.

In the dispute settlement working group most states support binding dispute settlement procedures in areas of national jurisdiction although a minority opposed or wish to limit drastically their applicability (e.g., to navigation and pollution issues). Questions remain with respect to the relationship to coastal state resource jurisdiction and the scope and type of

the dispute settlement mechanism. A compromise proposal permitting states to elect between three dispute settlement mechanisms -- i.e., the International Court of Justice, arbitration, or a special Law of the Sea Tribunal -- was acceptable to the vast majority of participants. However, some delegations considered that their preferred mechanism should be compulsory in all cases, while others favor a functional approach -- different machinery for different types of disputes. General support exists for special dispute machinery for the deep seabed.

It is now clear that the negotiation on the nature of the deep seabed regime and authority is the principal stumbling block to a comprehensive Law of the Sea Treaty.

The basic problem is an ideological gap between those possessing the technological ability to develop deep seabed minerals and those developing countries which insist that the international Authority directly and effectively control all deep seabed mining and associated activities, and ultimately become the exclusive operator on the deep seabed. The developing countries' position in this area is reflective of their general concern expressed in other international forums for reordering the economic order with respect to access to and control over natural resources, particularly with respect to their price and rate of development.

The United States explored a number of approaches in an effort to be forthcoming with respect to developing country

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demands for participating in the exploitation system. We indicated our willingness to abandon the inclusion of detailed regulatory provisions in the treaty and to concentrate on basic conditions of exploitation. We agreed to consider a system of joint ventures and profit sharing with the Authority. In addition, we informally proposed the reservation of areas for exploration and exploitation by developing countries. Such areas would be equal in extent and potential to those which were not reserved. However, in the reserved area the Authority could negotiate for the most favorable financial terms it could obtain. The Soviet Union proposed a parallel system through the reservation of areas in which the Authority could exploit directly, while in other areas states could exploit under a separate system of regulation by the Authority. Both approaches were rejected by the Group of 77. Some developing country flexibility in the deep seabeds was demonstrated by their willingness to submit the entire exploration system to the control of the Seabed Authority Council and to include representatives of designated developed and developing country interest groups on that body in addition to those selected on the basis of equitable geographic representation.

Mr. Chairman, with over 140 states participating in a Conference affecting vital and complex economic, military, political, environmental and scientific interests, we could

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easily characterize the results of the Geneva session as a considerable success. However, it is no longer sufficient to make progress, even substantial progress, if the goal of the adoption of a widely acceptable, comprehensive treaty continues to elude us beyond the point at which many States will feel compelled to take matters into their own hands in protecting interests with which the existing law of the sea does not deal adequately or equitably.

Mr. Chairman, I have spent a considerable amount of time over the last six years working with those both within and outside our government who appreciate the imperative need of building a better legal order for the oceans. Throughout this period, the members of the Senate Foreign Relations Committee, and you in particular, have provided sound advice and unfailing support in this effort to resolve what appeared at first to be insolvable problems. Some still believe that failure is inevitable. I do not and cannot accept that view. Moreover, I do believe most strongly that we would be terribly remiss as a nation if we did not make every exertion necessary to achieve an acceptable treaty on what appears to be the final stretch of this long road we have travelled. I sincerely hope that this Committee and the Congress in general will give its support in our common endeavor to establish order in the oceans.